

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

**JAMES PATRICK PHILLIPS,
WESLEY C. WALTON, and
JAMES BROOKS**

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NO. 4:04-CR-512

**NOTICE OF CONFLICT AND
JOINT MOTION TO CONTINUE SENTENCING**

The defendants jointly ask the Court to postpone sentencing from October 30 as follows:

1. Unopposed Request

Counsel for Walton has a long-planned trip with his high school son to visit colleges October 30 and then is set for trial in state court starting November 2. We ask the Court to reschedule sentencing to November 13 (on the assumption that the November 2 trial will end by then) and PSR objections by October 16. The United States does not oppose this request.

2. Opposed Request

The defendants requested a longer delay – until January 2010 – in D.E. 386, which we now reurge. Specifically, the defense has retained Ben Schlesinger to review the Brattle loss theory. His resume is attached as Exhibit A. While Mr. Schlesinger consulted with the defense during trial, we only received the sentencing loss theory on August 25. The United States opposes this longer reset.

Respectfully submitted,

/s/ David Gerger

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Certificate of Conference and Service

The United States does not oppose a continuance to November 13. A copy of this pleading was served on prosecutors John Lewis and Belinda Beek the day of filing by electronic mail from the Clerk of Court.

/s/ David Gerger
David Gerger